

Application No.: 10/763,846

Amendment Dated: August 6, 2007

Reply to Office Action Dated: May 4, 2007

REMARKS/ARGUMENTS

In response to the **FINAL** Restriction Requirement set forth in the Official Action dated May 4, 2007 in the instant application, Applicants again hereby elect, without traverse, to prosecute the species of the claimed invention identified by the Examiner as Species II as shown in FIGS. 6-9. Currently, claims 1-6 and 9 are readable on this species.

If necessary, Applicants reserve the option to file during the pendency of the present application one or more divisional application(s) directed to the aspects of Applicants' invention reflected in non-elected Species I, III, IV and/or V.

Claims 1-4, 5, 6 and 9 stand provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-4, 6, 13 and 11 respectively of copending Application No. 10/764,237.¹ Such rejection is respectfully traversed.

Claim 1 as amended herein has been modified to specifically state that the claimed adjustment means comprise a "non-slip friction mechanism." This modification of claim 1 results in an invention that is clearly not the same as the invention that was initially claimed, or subsequently claimed, in claim 1 of Applicants' copending Application No. 10/763,237 (the "'237

¹ The actual "double patenting" rejection refers to USPA 10/764,235 when, in fact, it appears to be in reference to Applicants' copending USPA 10/764,237 in which there is raised a similar and corresponding "double patenting" rejection. USPA 10/764,235 has no relationship to the presently disclosed and claimed invention.

Application No.: 10/763,846
Amendment Dated: August 6, 2007
Reply to Office Action Dated: May 4, 2007

application"). An Office Action was issued by the USPTO on April 24, 2007 in the '237 application and a corresponding Section 101 rejection was raised in that Office Action. In addition, a Notice of Non-Compliant Amendment was issued in that application on July 24, 2007.

Applicants timely filed responses to the April 24, 2007 Office Action in the '237 application and the July 24, 2007 Notice of Non-Compliant Amendment issued therein.

In both of Applicants' responses to the outstanding Office actions and objections in the '237 application, claim 1 of that application was specifically amended to recite that the adjustment means thereof comprise at least a "slip friction mechanism." Thus, the amendments filed in the '237 application render the invention claimed in claim 1 of the present application assuredly not be the same invention as that claimed in any claims of the '237 application.

In any event, the differences between a "slip friction mechanism" and a "non-slip friction mechanism" in the context of Applicants' invention are quite substantial. To underscore the significant differences between these mechanisms, reproduced herebelow for the Examiner's convenience are certain passages from the instant application (and the '237 application) as originally filed, with emphasis and double emphasis added.

The friction-type adjustment mechanism 136 and certain others described hereinafter may be suitably referred to

Application No.: 10/763,846

Amendment Dated: August 6, 2007

Reply to Office Action Dated: May 4, 2007

as a "slip friction mechanism." As used herein, the term "slip friction mechanism" shall mean an assembly which is derivative of a ratchet and a slip friction disk clutch assembly. It is derivative of a ratchet in that it is used to progressively tighten the hair gripping portions 122, 124 about a lock or shock of hair as described below. And, it is derivative of a slip friction disk clutch assembly in that the position into which the wearer squeezes the hair gripping portions 122, 124 may be overcome by a rotational force which exceeds the friction force of adjustment mechanism 136, similar to the manner in which a friction clutch slips when the torque applied to the clutch is too great (although, unlike a friction clutch, the various slip friction mechanisms described herein are passive in nature, i.e., they do not serve to drive any parts of the hair holding device). The slip friction mechanisms of the present invention comprise a first surface associated with a first body member (e.g., body member 112), a second surface associated with a second member (e.g., second body member 114), and biasing means for maintaining contact between the first and second surfaces whereby a slip friction interface is created between the first and second surfaces. The shear or friction force generated at the slip friction interface must be sufficient in all instances (regardless of whether a torsion spring or other body member biasing means is present) to cause the body members to remain in the desired hair holding position selected by the user until such time that the user chooses to doff the device by applying a rotational opening force that exceeds the friction or shear force at the slip friction interface.

Present specification (and the '237 application) in the paragraph bridging pages 9 and 10.

The friction-producing surfaces 394 of lug 320 and 406 of lug 318 are adapted for generating a high degree of shear force when brought into engagement with one

Application No.: 10/763,846

Amendment Dated: August 6, 2007

Reply to Office Action Dated: May 4, 2007

another by disengagement means 360. Indeed, the friction-producing surfaces 394 of lug 320 and 406 of lug 318, in cooperation with disengagement means 360 produce a friction-type adjustment mechanism 136 that may be suitably referred to as a "non-slip friction mechanism." As used herein, the term "*non-slip friction mechanism*" shall mean an assembly which is derivative of a ratchet and a non-slip friction disk clutch assembly. It is derivative of a ratchet in that it is used to progressively tighten the hair gripping portions 322, 324 about a lock or shock of hair. And, it is derivative of a non-slip friction disk clutch assembly in that the position into which the wearer squeezes the hair gripping portions 322, 324 may not be readily overcome by a rotational force exerted by a user (although, unlike a friction clutch, the various non-slip friction mechanisms described herein are passive in nature, i.e., they do not drive any shaft or other parts of the hair holding device). The non-slip friction mechanisms of the present invention comprise a first surface associated with a first body member (e.g., body member 312), a second surface associated with a second member (e.g., second body member 314), and biasing means for maintaining contact between the first and second surfaces whereby a non-slip friction interface is created between the first and second surfaces. The shear or friction force generated at the non-slip friction interface must be sufficient in all instances to cause the body members to remain in the desired hair holding position selected by the user until such time that the user chooses to doff the device by releasing them using the disengagement means 360 as described below.

Present specification (and the '237 application) in the paragraph bridging pages 18 and 19.

As will be appreciated from the foregoing, a "slip friction mechanism" as called for in amended claim 1 of the '237

Application No.: 10/763,846
Amendment Dated: August 6, 2007
Reply to Office Action Dated: May 4, 2007

application requires no more than ordinary user force to unseat the friction force between the friction-producing surfaces. In stark contrast, the presently claimed "non-slip friction mechanism" requires considerably more than ordinary user force to unseat the friction force between the friction-producing surfaces. Indeed, the friction-producing surfaces of the non-slip friction mechanism are preferably unseated through use of separate disengagement means.

Accordingly, Applicants respectfully request that the outstanding Section 101 rejection of claims 1-4, 5, 6 and 9 be withdrawn at this time or, in the alternative, at such time that claim 1 of Applicants' copending '237 application is officially amended to include a "slip friction mechanism."

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 870,330 to Wilde. Such rejection is respectfully traversed.

In regard to Wilde, Applicants initially note that the Wilde device is an ear ring. It is not a hair holding device. As explained below, it would be essentially useless in holding a lock or shock of hair.

Simple inspection of FIGS. 1 and 5 of the Wilde patent reveals that the opposed convex "dished ends" 7 and 11 of spring frame "a" and clamping member "b", which together apply clamping force to retain the ear ring on a user's ear, present very small

Application No.: 10/763,846

Amendment Dated: August 6, 2007

Reply to Office Action Dated: May 4, 2007

cooperative clamping surface areas, i.e., areas sufficient to clamp a user's ear lobe. Even assuming such surfaces were as large as those shown in FIG. 5 of Wilde (which they very likely would not be in practical use), and if they were attempted to be used to clamp a wearer's hair, they would clamp little more than a few strands of hair at the centralmost portions of the clamping surfaces. As a result, even if somehow adapted to a hair holding device, such a clamping arrangement would very likely quickly become disengaged from and fall from the user's hair.

Moreover, the hair holding device of Applicants' claim 1 specifically calls for hair gripping portions as being part of the first and second body members. The Examiner's statement of rejection in reliance upon Wilde is conspicuously silent regarding the presence of any hair gripping portions in the Wilde device. As such, the ear ring taught by Wilde does not anticipate the invention defined in Applicants' claim 1.

Accordingly, withdrawal of the outstanding section 102(b) rejection of claim 1 and its dependent claims 2-6 based on Wilde is respectfully requested.

Lastly, Applicants kindly submit that it would be legally improper hindsight to assert that it would have been obvious at the time of Applicants' invention to adapt the teachings of Wilde to hair holding device technology to produce a hair holding device having a non-slip friction adjustment means as

Application No.: 10/763,846
Amendment Dated: August 6, 2007
Reply to Office Action Dated: May 4, 2007

prescribed in Applicants' claim 1. In this regard, the Examiner will note that the Wilde patent issued in 1907. In the 100 years since, as reflected not only the Wilde patent but also in the other references cited by the Examiner as being of interest, none have proposed the use of a non-slip friction adjustment means (or a slip friction adjustment means for that matter) outside of the ear ring art. In other words, inventors have had a century since issuance of the Wilde patent to conceive of a hair holding including a non-slip of a slip friction adjustment means. None have done so. This fact is compelling testament to the non-obviousness of Applicants' invention.

Claims 1-6 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,546,750 to Sheehan. Such rejection is respectfully traversed.

The Sheehan device is a one-way gripping device (specifically, a cable tie) for permanently gripping strands, cables, wires and the like (see col. 1, lines 48-52). In fact, the curved arms 22 and 24 of the Sheehan device must be physically severed, thereby destroying the device, in order to remove it from the cables or like members about which it is bound (see col. 3, lines 15-19). The arms 22 and 24 of Sheehan are connected to a one-way ratchet mechanism that prevents reverse rotation of the arms (see col. 1, lines 24-27; col. 3, lines 3-14, lines 20-26 and lines 42-51; and col. 4, lines 1-4). Such a one-way gripping mechanism is the antithesis of the non-slip friction mechanism particularly recited in Applicants'

Application No.: 10/763,846

Amendment Dated: August 6, 2007

Reply to Office Action Dated: May 4, 2007

amended claim 1 and described in Applicants' specification which purposely does permit reverse rotation of the hair gripping members. Consequently, Sheehan does not anticipate the invention defined in Applicants' claim 1.

Accordingly, withdrawal of the outstanding section 102(b) rejection of claim 1 and its dependent claims 2-6 and 9 in reliance upon Sheehan is respectfully requested.

The references cited by the Examiner as being pertinent to Applicants' disclosure have been considered but are not believed to be any more relevant to the presently claimed invention than those discussed above.

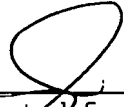
In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the present application, he is invited to contact the undersigned at the telephone number listed below.

Application No.: 10/763,846
Amendment Dated: August 6, 2007
Reply to Office Action Dated: May 4, 2007

Respectfully submitted,

Date: August 6, 2007



John F. Letchford
Registration No. 33,328

Archer & Greiner
A Professional Corporation
One Centennial Square
P.O. Box 3000
Haddonfield, NJ 08033-0968
Tel.: (856) 354-3013
Fax: (856) 795-0574
E-mail: jletchford@archerlaw.com

2791352v1